

1992

# Utah State Department of Health v. William D. Peterson and Pemco : Reply to Brief in Opposition

Utah Supreme Court

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920142

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IN THE SUPREME COURT IN AND FOR THE STATE OF UTAH  
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Utah State Department of Health	)	
	)	
Plaintiffs-Respondent,	)	
-vs-	)	Supreme Court No. <del>900498</del> 920142
	)	
William D. Peterson & PEMCO	)	
	)	COA Case No. 910422-CA
Defendants-Appellant.	)	

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REPLY-BRIEF FOR WRIT OF CERTIORARI  
of  
Appellant - (Defendant)

-----  
Appeal from the Order of the Utah Court of Appeals  
State of Utah  
Case No. 910422-CA  
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Appealed from the Court Order of the Third District  
Court of Salt Lake County, State of Utah  
The Honorable David S. Young, Judge  
Civil No. 900901098  
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WDP file  
Reply-B2

April 20, 1992

BRIEF ON APPEAL, per letter from Supreme Court Clerk,

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IN THE SUPREME COURT IN AND FOR THE STATE OF UTAH  
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Utah State Department of Health	)	
	)	
Plaintiffs-Respondent,	)	
-vs-	)	Supreme Court No. 900498
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April 20, 1992

BRIEF ON APPEAL, per letter from Supreme Court Clerk,

December 3, 1990. Rules 24, 26, and 27 are referenced.

REPLY-BRIEF FOR WRIT OF CERTIORARI

Reply-B2

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### 3.0 TABLE OF AUTHORITIES

#### 3.1 Constitutional Authorities

3.1.1 ARTICLE V of the Constitution of the United States, entitlement to for payment for property taken for public use, shall not be deprived due process of law. Ref pgs 4,5

3.1.2 ARTICLE VII of the Constitution of the United States, right of trial by jury shall be preserved. Ref pgs 3,4

#### 3.2 State Law Authorities

3.2.1 Title 14, chapter 1, section 7 - Liability of State for failure to obtain a payment bond. Ref pg 4

3.2.2 Title 14, chapter 1, section 15 - Liability of State for failure to obtain a payment bond. Ref pg 4

3.2.3 Title 14, chapter 2, section 2 - Failure to require bond - Direct liability - Limitation of actions. Ref pg 4

3.2.4 Title 63, chapter 56, section 38 - Bonds necessary when contract is awarded. Ref pg 4

3.2.5 Rule 8(c) of Utah Rules of Civil Procedure - When a party has ... designated a defense as a counterclaim or a counterclaim as a defense, the court ... shall treat the pleading as if there had been a proper designation. Ref pgs 1,2

3.2.6 Rule 12(a) of Utah Rules of Civil Procedure - A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty days after the service upon him. Ref pg 3

3.2.7 Rule 13(f) of Utah Rules of Civil Procedure - A pleading may state as a cross-claim any claim by one party against a co-party ... Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant ... Ref pgs 1,3

3.2.8 Rule 13(h) of Utah Rules of Civil Procedure - Judgement on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of. Ref pgs 1,3,5

3.2.9 Rule 54(b) of Utah Rules of Civil Procedure - Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented ... as a cross-claim ... the court may direct the entry of a final judgment as to one or more, but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay, and upon an express direction for entry of the judgment. Ref pg 1

3.2.10 Rule 55(a) of Utah Rules of Civil Procedure - When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter his default.

Ref pg 5

### 3.3 Rhetoric on Supporting Authority

The appellant maintains that he has certain rights of law including a right for a trial between the conflicting parties according to ARTICLE VII of the U.S. Constitution. The appellant maintains that he is entitled to just compensation for his property taken and used for public use according to ARTICLE V of the U.S. Constitution.

The defendant was then and is still now situated in this matter where judgment has been imposed upon him without support of law wherein defendant is entitled to the benefit of a judgment as a matter of law: See, Title 14, chapter 1, section 7 and 15 - Liability of State for Failure to Obtain Payment Bond, Title 63, chapter 56, Sec. 38 - Bonds Necessary when Contract is Awarded, and Article V of the Constitution of the United States which requires that private property cannot be taken for public use without just compensation. Defendant is entitled to a hearing as a matter of law and has been denied his right to a judgment without reason or due process of law.

## REPLY-BRIEF

### 4.0 DEFENDANT HAS LAWFUL DEFENSE/COUNTERCLAIM IN FOUR MATTERS

The defendant's counterclaim was not only his complaint, it was his defense in this matter and all matters wherein various agencies of the State brought suit against him, ref Rule 8(c).

By means of background information, in his divorce action the defendant filed a counterclaim and stated that he could not adequately support his family unless he was paid for his work and property improperly taken and used by the Utah State government. His defense and his counterclaim was made properly according to Utah Rules of Civil Procedure, Rule 13 & 54 of the Utah Rules of Civil Procedure, but the counterclaim was dismissed by Commissioner Sandra Peuler of the Third District Court, the court of Judges Valerie A. Macris and Stephanie A. Mallory, court of Judge Russon, court of Judge Young, and Utah Court of Appeals. In all matters, Mr. Peterson claimed that he was owed monies by the state, and not having his monies, made him unable to pay support for his wife and family, and his business.

In the immediate matter the Plaintiff has defended its posture of ignoring defendant's defense and counterclaim by stating that the defendant's complaint was made previously in the court of Judge Russon. Defendant responds to the plaintiff as follows:

Is the plaintiff asserting that since the defendant asserted his defense in another matter that he cannot assert his same defense in this matter? IN REALITY - the defendant would never have had his business problems if he had been paid properly for his work. The plaintiff's wife would have never sought divorce if the defendant had been able to pay for the financial needs of his family

which he could not do because of his business problems created from not being paid for his work. The defendant's former wife would never have appealed to the state to sue the defendant for support monies if he had had monies to pay support, him not having monies because of paying for equipment taken and used by the State but not paid for. In all three of these matters the defendant's defense and his counterclaim is the same, Rule 8(c). The State of Utah owes the defendant for his property. The plaintiff has effectively asserted for his judgment telling the court that the defendant was not entitled to his defense since he had previously used his defense in another court.

Herein, four times, the plaintiff has obtained judgment of the defendant, without lawful trial, without the hearing of the defendant's defense, without hearing of the defendant's rightful defense/counterclaim - the plaintiff's excuse asserted is that the defendant used his defense in a another court matter, therefore perpetuating that his defense cannot be used in this matter. The plaintiff's defense is absurd and irrelevant.

#### 5.0 PLAINTIFF IS JUDGE SHOPPING TO AVOID DEFENDANT'S DEFENSE/COUNTERCLAIM

The plaintiff has been attempting to isolate their issues from the issues of the defendant by a form of "judge shopping".

Mr. Peterson brought complaint for payment in the court of Judge Russon. The State of Utah wanted Peterson to continue work by demobilizing his equipment. To ram-rod their demands upon Peterson, the State apparently, instead of properly bringing in their issues against Peterson in the current matter before Judge Russon, they instead brought another and separate suit before Judge Young against Peterson, apparently, to concentrate on their issues and in so doing to avoid the issues of Peterson. But before Judge



Young, Peterson did rightfully bring in his issues with his defense made by way of a counterclaim. Meanwhile the State moved for and had Peterson's original defense by way of a counterclaim quashed in the court of Judge Russon.

The defendant appeals that as a result of the plaintiff's "judge shopping" to avoid the complaints of the defendant, he was given judgment without the court hearing his defense or granting a proper trial for which he is entitled according to the United States Constitution, Article VII.

#### 6.0 COURT HAS NO BASIS FOR DISMISSAL OF DEFENDANT'S DEFENSE/COUNTERCLAIM

In three different matters, the plaintiff brought suit against the defendant. In all matters, the defendant properly made defense by way of his defense/counterclaim with his answer to plaintiff's complaint. In all three matters, the defendant was entitled to the consideration of the court despite any entitlement of the plaintiff per RCP-13(h). In all three matters, the plaintiff was required to respond to the defendant's counterclaim according to RCP-12(a). In all three matters, the plaintiff failed to answer the defendant's counterclaim. In all three matters, the defendant is entitled to judgement for the plaintiff's failure to answer. The courts have had no basis to just ignore the defendant's defense.

The court should not have granted a dismissal in this matter simply because the defendant did perform according to the order of the court for the Court never heard the Defendant's defense, which defense/counterclaim was never deemed to be invalid by Judge Young.

By his counterclaim, instead, the defendant was clearly entitled to judgment for payment of his properties taken and used for the public and clearly should have been given judgment because of the Plaintiff's deficient bond, for which he should have been immediately paid as set forth in Utah Code Section 14-1-15.

#### 7.0 DEFENDANT'S ENTITLEMENT PER HIS COMPLAINT

The defendant has entitlement pursuant to his counterclaim. The court has no basis for dismissal of the defendant's counterclaim. The court ignored the defendant's defense made by virtue of his counterclaim. The court ignored that the plaintiff never answered the defendant's counterclaim as required by law. The court should not have rendered judgment without a hearing and consideration of the defendant's defense.

The court levied judgment against the defendant without regard and allowance of his defense. After the Defendant performed according to the Order of the Court, the entire matter was dismissed, including the Defendant's counterclaim. Instead, by his counterclaim, the defendant was clearly entitled to judgment for payment of his properties taken and used for the public according to Articles V and VII of the Constitution.

Also, the defendant should clearly have been given judgment because of the State's deficient bond, for which he should have been immediately paid according to Utah Code Titles 14 & 63. Also, the defendant should clearly been given judgment by the rules of the courts for the plaintiff's failure to answer the defendant's counterclaim-complaint.

#### 8.0 DEFENDANT'S ENTITLEMENT PER CONSTITUTIONAL LAW

In his defense, the defendant asserted for payment for his costs of his properties' taken and used by our government, according to Article V. He now asserts that he has been denied a fair trial with defense in three Utah courts wherein he has been given judgement without defense or fair trial. The defendant is now prepared to proceed with the complaint.

#### 9.0 DEFENDANT'S ENTITLEMENT BY DEFAULT JUDGMENT BY COURT CLERK

Agencies of the State of Utah have manipulated the courts of Utah to avoid the defense of the defendant.

In three matters the defendant was entitled to judgment on counterclaim for the plaintiff's failure to answer per RCP-13(h) & RCP-55(a). The defendant thus respectfully gives notice to the clerks of the court of the plaintiff's failure to plead or to otherwise defend against the defendants counterclaim and pleads for entry of default judgment of the clerk per RCP-55(a).

#### 10.0 DEFENDANT'S ENTITLEMENT FOR FRAUD OF THE PLAINTIFF

The assertion that the defendant has on file a duplicative answer/counterclaim in the court of Judge Russon/Stirba is a fraudulent statement. If this were so, let the plaintiff show its filed answer. In reality, the fact that the defendant may have filed the same counterclaim/answer in another court matter is irrelevant. The law make no restriction that once a person uses a defense once that he cannot use the same defense again. The court has no basis for the dismissal of the defendants counter-claim.

11. CONCLUSION

In conclusion, the Defendant prays that the Court consider its arguments that he has not been provided the opportunity for his day in Court. The lower court summarily dismissed the Defendant's counterclaim on the grounds that his counterclaim was identical to another action filed before Judge Russon of the same court. However, the nature of the Defendant's counterclaim before Judge Young in this matter was in the form of a defense to the State's claims, and the defense should have been given a hearing without summary dismissal when the State had never undertaken to file an answer to the counterclaim.

12.0 ATTORNEY SIGNATURE

Dated this 30<sup>th</sup> day of April, 1992.



WILLIAM D. PETERSON  
defendant, appellant

13.0 PROOF OF SERVICE - CERTIFICATE OF DELIVERY

This is to certify that 4 (four) true and correct copies of the fore going - REPLY-BRIEF FOR WRIT OF CERTIORARI - are being delivered at the office of the Attorney General, State Capital building in Salt Lake City, Utah, per rule 5 (b)1 and rule 4 (e)(9), in an envelope addressed to:

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Attorneys for the plaintiff

Dated this 30<sup>th</sup> st day of April, 1992.

  
William D. Peterson